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PROGRESS REPORT ON THE INTERNATIONAL NEGOTIATIONS FOR A CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

I. INTRODUCTION

1. International negotiations for a Code of Conduct on transnational corporations were initiated in January 1977 by the Commission on Transnational Corporations which set up an Intergovernmental Working Group with the specific mandate to prepare a draft code on transnational corporations. 1/ The Intergovernmental Working Group on a Code of Conduct has held over seventeen sessions since then but due to the difficult and politically sensitive nature of the issues involved, the negotiations have been arduous and exceedingly protracted.

2. Some of the major issues of concern to the African countries, which were fully taken into account in the submissions of the Group of 77 includ: (a) scope and coverage of the code; (b) the definition of the term "transnational corporations"; (c) treatment of transnational corporations; (d) non-collaboration by transnational corporations with the racist minority regime of South Africa; (e) the exercise of national sovereignty and non-interference by TNCs in international political affairs of host countries; and (f) issues relating to the treatment of transnational corporations in host countries, nationalization and compensation.

II. MAJOR OUTSTANDING ISSUES ON THE CODE

3. Since the negotiations started, some degree of understanding has been reached on a few aspects of the code such as the obligations of TNCs in matters relating to consumer and environmental protection; ownership and control; effects on balance of payments of TNCs operations; respect by TNCs of socio-cultural and development objectives of the host countries; and disclosure of information by Transnational Corporations.

(a) First Special Session on the Code of Conduct

4. Despite this progress, widely divergent views continue to exist on some of the issues considered to be fundamental to the economic interests of the parties involved in the negotiations on the draft code. Among the outstanding issues where major differences exist include the "Preamble and objectives", "Definitions and scope of application," "Activities of transnational corporations" including the question of Southern Africa and "Treatment of transnational corporations". Consequently, the Economic and Social Council, on the recommendation of the Eighth Session of the Commission decided in its resolution 1982/68 of 27 October 1982, that a special session of the Commission on Transnational Corporations should be held to discuss exclusively the outstanding issues of the code. Such a session would be open for participation of all states member of the United Nations. The session duly took place in two sittings in March and May 1983 in New York.

1/ See Report of the Intergovernmental Working Group on the Code of Conduct, E/C.10/31, 4 May 1977.

5. In order to assist the African countries to participate effectively in these negotiations, the ECA Secretariat, in collaboration with the United Nations Centre on Transnational Corporations, organized the second African Regional Meeting on a Code of Conduct on Transnational Corporations.2/ The purpose of the meeting, which was attended by twenty two countries, was to brief the African countries on the progress which had been achieved in the work towards the formulation of the code. This meeting acted as a follow-up on the first African regional meeting on the same subject which was held in Addis Ababa in 1977. 3/ A paper was prepared by the secretariat and presented at the Addis Ababa meeting analyzing the issues of the Code from the African perspective. 4/

6. Although the special session was unable to complete the Code, the intensive negotiations which took place led to some consensus on a few additional paragraphs. Specifically, agreement is beginning to emerge on the following issues: (a) activities of transnational corporations with respect to adherence to economic goals and development objectives, policies and priorities; (b) ownership and control; (c) balance of payments and financing; (d) issues of employment by TNCs; and (e) restrictive business practices. With reference to this last issue, it was agreed to include in the Code, reference to two instruments adopted in other forums namely, the Tripartite Declaration of principles concerning Multinational Enterprises and Social Policy (ILO) and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

(b) Second Special Session on the Code of Conduct

7. In accordance with its above mentioned resolution 1982/68, the Economic and Social Council presented the result of the special session of the Commission on TNCs to the thirty eighth session of the General Assembly for its consideration and appropriate action. In its resolution 38/428, the General Assembly requested the Commission on Transnational Corporations to reconvene again in a special session to assess the work on the draft Code and prepare the way for further negotiations on the outstanding issues. This reconvened session on the Code took place in New York from 9 to 13 January 1984. It essentially reviewed the basis of some of the key issues proving the most difficult to resolve including, among others the scope of application of the Code, legal nature of the code, applicability to international law, treatment at national level and settlement of disputes. In spite of strong

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2/ See Report of the Second African Regional Meeting on a Code of Conduct on Transnational Corporations, E/ECA/UNCTC/25, 18 February 1983.

3/ See Report of the African Regional Meeting on a Code of Conduct for Transnational Corporations, E/ECA/UNCTC/22, 12 January 1983.

4/ See "The Proposed International Code of Conduct on Transnational Corporations: The African Perspectives, A note by the ECA Secretariat, E/ECA/UNCTC/20, 20 January 1983.

divergent positions held by the various groups, they remained positively interested in further negotiations. At the end of this session a recommendation was made to the Economic and Social Council that the Commission on Transnational Corporations should hold another special session probably in March 1984 to complete the work on the formulation of the Code.

III. OTHER CODES RELATING TO TRANSNATIONAL CORPORATIONS

8. Due to the multidimentional characteristics of Transnational Corporations, there have been other international codes of conduct which aim at addressing specific issues of global concern. Among some of the early codes are (a) the "set of guidelines for multinational enterprises" together with principles regarding government policies which were adopted by the organization for Economic Co-operation and Development (OECD) to regulate the activities of transnational corporations. The International Chambers of Commerce (ICC) and the World Confederation of Labour (WCL) have also in the past attempted to define the areas of activities of transnational corporations.

9. Other organs of the United Nations, especially the United Nations Conference on Trade and Development, (UNCTAD) World Health Organization (WHO) and the International Labour Organization (ILO) have elaborated specific guidelines to cover dealings with transnational corporations. Examples of such codes include the following (i) International Code on Marketing of Breast Milk Substitutes (WHO); (ii) The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO); (iii) Principles and Rules on Restrictive Business Practices (UNCTAD); (iv) International Standards of Accounting and Reporting (UNCTC); (v) Code of Conduct on the Transfer of Technology; (UNCTAD; and (vi) International Greement on Illicit Payments (ECOSOC).

IV. CONCLUSIONS

10. The essence of the code of conduct on transnational corporations lies in treatment which the African Governments should give to the Transnational Corporations and their expectation how such TNCs should conduct themselves or contribute to the development processes of the countries in which they operate. The adoption of the code of conduct is also expected to strengthen the bargaining position of African Governments, both individually and collectively, vis-à-vis the TNCs. As such, its early adoption is of extreme importance, especially in the attainment of collective self-reliance as envisaged in the Lagos Plan of Action. Unfortunately, Africa's attendance at the previous negotiation session was extremely poor, and as a result, important decisions which might shape the future of this continent were taken without the full and active participation of most African countries. In order to ensure that Africa's concern are fully reflected in the code when finally adopted, the Secretariat feels that the participation of all African countries in the current negotiations, including the special sessions, is of paramount importance.